

Rosanne Palmer

Devolution, Asymmetry and Europe

Multi-Level Governance in the United Kingdom

R E G I O N A L I S M A N D F E D E R A L I S M

P. I. E. PETER LANG



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The process of devolution in the United Kingdom (UK) established new institutions at the sub-state level with a range of legislative and executive competencies. Yet many of these devolved powers also have a European Union (EU) dimension, whilst EU policy remains a formally reserved power of the UK central government.

This book explores how this multi-level relationship has been managed in practice, examining the participation of the devolved Scottish and Welsh institutions in the domestic process of formulating the UK's EU policy positions during their first four-year term. It also places their experiences in a broader comparative framework by drawing upon the experiences of multi-level governance in practice in other Member States of the EU.

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in the United Kingdom**



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List of Abbreviations

ACs	Autonomous Communities (Spain)
AM	Assembly Member (Wales)
CLRAE	Congress of Local and Regional Authorities of Europe
CO	Cabinet Office
COES	Cabinet Office European Secretariat
CoR	Committee of the Regions
COSLA	Convention of Scottish Local Authorities
CSG	Consultative Steering Group (Scotland)
DEFRA	Department of the Environment, Food and Rural Affairs (formerly MAFF)
DETR	Department of the Environment, Transport and the Regions (subsequently DTLR)
DfEE	Department for Education and Employment (subsequently DfES)
DfES	Department for Education and Skills
DGN	Devolution Guidance Note
DTI	Department of Trade and Industry
DTLR	Department of Transport, London and the Regions
EC	European Community
EEAD	European and External Affairs Division (Wales)
ESG	European Strategy Group (Wales)
EU	European Union
FCO	Foreign and Commonwealth Office
GM	Genetically Modified
IGC	Inter-Governmental Conference
JMC	Joint Ministerial Committee
JMC(E)	Joint Ministerial Committee (Europe)
MAFF	Ministry of Agriculture, Fisheries and Food
Minecor	Ministerial Group for European Co-ordination
MoU	Memorandum of Understanding
MSP	Member of the Scottish Parliament

NAAG	National Assembly Advisory Group
NAW	National Assembly for Wales
REGLEG	Conference of European Regions with Legislative Power
SE	Scottish Executive
SEA	Single European Act
SEERAD	Scottish Executive Environment and Rural Affairs Division
SNP	Scottish National Party
SP	Scottish Parliament
SSA	Sub-state Authority
TEU	Treaty on European Union
UK	United Kingdom
UKRep	United Kingdom Permanent Representation to the European Union
WAG	Welsh Assembly Government
WEC	Wales European Centre

Preface

The present book examines the implications of devolution in the United Kingdom for that country's domestic EU policy formulation process. Although the period of data collection, mainly in the form of interviews with civil servants and party officials, ran from 2000 to 2003, a number of the conclusions drawn continued to apply until 2007 as the Labour Party effectively continued to dominate the three executives examined here. However, the devolved elections of May 2007 dramatically altered this party political balance. The implications of such "governmental incongruence", considered by many to be the key challenge to intra-UK relations post-devolution, are considered in the Postscript.

A number of people deserve to be thanked for their assistance during the course of the researching and writing of this book, not least the civil servants and party officials at the devolved, Whitehall and Brussels levels, who gave up their time to discuss their work and share the experiences of managing EU policy processes post-devolution. Interviews took place in 2000/01 and again in 2003. The second round of interviews took place under the auspices of the project "Multi-level governance in the EU" (Project IGBN), part of the Leverhulme Trust-funded programme "Nations and Regions: The Dynamics of Devolution", headed by the Constitution Unit at University College London.

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It remains only to thank my parents for their unending support and to dedicate this book to my Nan, for whose strength, love and belief in me I will always be grateful.

RP

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INTRODUCTION

Multi-Level Governance in the United Kingdom

Devolution in the United Kingdom (UK) formed a central element of the constitutional reform programme of the Labour Government elected in May 1997. This process of devolution recognised the territorial differentiation evident in the United Kingdom and substantively altered structures of territorial governance. Literature on devolution in the UK, both from the 1990s and from the earlier 1970s debate, suggests an agreement that devolution involves the transfer of powers from a superior decision-making body to an inferior one (Bogdanor, 1999: 2; Bradbury & Mawson, 1997: 11). In the case of the UK, these subordinate bodies are directly elected and relate to specific geographical areas – Scotland, Wales and Northern Ireland. In the following discussion, devolution is thus interpreted as signifying “the transfer to a subordinate elected body, on a geographical basis, of functions...exercised by ministers and Parliament.” (Bogdanor, 1999: 2)

As this devolution process unfolded, it necessarily led to a re-adjustment in government structures within the UK. It also contributed to a recalibration of relations between the UK and the European Union (EU) by reshaping the system of interaction between the multiple levels of government and governance within the UK. The introduction of devolution thus created the opportunity to examine a newly evolving model of multi-level governance in an EU Member State – the EU-related activities of the devolved Scottish and Welsh institutions and the attitudes and reactions of the central government towards these changed circumstances. The unpredictable nature of politics in Northern Ireland, the intermittent suspension of the Northern Ireland Assembly and then its long-term suspension in autumn 2002, only lifted in 2007, resulted in the exclusion of the Northern Ireland Assembly from the scope of this study.

The overall aim of the analysis that follows is to provide a grounded theoretical understanding of the role of the devolved authorities in domestic EU policy formulation within the UK. In addition, it will raise the question of the extent to which our understanding of developments in the UK can be informed by the experiences of sub-state institutions in

other EU Member States. The term “sub-state” is preferred here to the term “regional”. Although Scotland and Wales are referred to as “regions” for EU administrative purposes, they are generally considered to be nations or countries that form constituent parts of the UK.

A comparative approach of this kind will allow us to understand whether developments in intra-UK relations derive largely from system-specific factors or reflect broader trends in sub-state mobilisation in the EU. As part of this comparative approach, existing academic literature dealing with the phenomenon of sub-state mobilisation in the EU will be considered in Chapter 1, with a particular focus upon the approaches adopted for the purpose of explaining this development, as well as the experiences of inter-governmental relations within other federal or devolved EU Member States. In particular, the concepts of *paradiplomacy* and of “European Domestic Policy”, the latter developed by the German *Länder* during the 1980s, will be explored as potential complements to enhance the explanatory potential of the concept of multi-level governance for understanding the dynamics of sub-state mobilisation in the EU in general, but in the UK in particular.

The study is not restricted to a particular policy area where EU and devolved competences overlap, but rather looks at experiences across a range of policy areas to investigate the potential for differing levels of engagement on the part of the devolved administrations and different attitudes towards devolution on the part of central government departments. It thus moves beyond the earlier focus upon sub-state authorities in the field of EU regional policy in studies of the operation of multi-level governance in the EU.

Chapter 2 will then consider the pre-devolution EU policy formulation process in the UK, focusing in particular upon the representation of territorial concerns and interests in that process. This focus is considered more important to understanding developments in the post-devolution UK than an examination of the pre-devolution system of multi-level governance covering the engagement, or lack thereof, of UK local authorities with EU-related issues. Examining the representation of Scottish and Welsh interests in central government pre-devolution will allow changes in the post-devolution process to be discerned, as well as identifying potential areas of friction in the relationship between central and devolved levels of government.

The next chapter will examine the provisions made for the involvement of the devolved administrations in the UK’s domestic EU policy formulation process. The framework within which the relationships take place is central to understanding the management of intra-state relations. The chapter will trace the development of this framework from the proposals contained in the 1997 White Papers, through the Acts of

Parliament to the Memorandum of Understanding (MoU) and the Concordats that create the non-binding framework for the relationship. It will also enable the key principles intended to underpin these relationships to be identified.

The subsequent three chapters provide the empirical basis of the analysis presented here. These chapters are substantially based upon interviews carried out with a range of officials (including party and legislature-based) at devolved, UK and EU levels, as well as primary source documentation, including government press releases and the official reports of the devolved institutions. The period of data collection covers the first term of the Scottish and Welsh institutions from the transfer of powers in July 1999 to the second-ever devolved elections in May 2003.

Chapter 4 will examine the experiences of the Scottish Executive and Scottish Parliament during this time period, whilst Chapter 5 focuses upon the Welsh Assembly Government and the National Assembly for Wales. The penultimate chapter considers the central government's experience of managing the EU policy formulation process post-devolution and the perception of the involvement of the devolved institutions by actors at the centre. Chapter 7 then seeks to gather these strands together and review them in light of the hypotheses posited in Chapter 1.

CHAPTER 1

Multi-Level Governance in the European Union

Introduction

This study explores the involvement of the United Kingdom's devolved institutions in domestic EU policy formulation. In order to enhance our understanding of this involvement, the aim here is to examine their experiences during the first four years of devolution in the context of those of other decentralised or federal EU Member States. To this end, this chapter will focus upon the key interpretations of sub-state mobilisation that have been developed since the late 1980s. Given that most integration theory focuses upon the balance between state and supranational levels, "grand" theories of integration generally fail to acknowledge the (potential) engagement of sub-state actors with EU policy-making. As a consequence, this chapter will concentrate upon those interpretations that seek specifically to explain sub-state mobilisation, rather than discussing broader integration theory.

We begin with an overview of the channels developed for facilitating sub-state engagement, before moving on to consider early explanations of sub-state mobilisation, namely the concepts of a "Europe of the Regions" and a "Third Level". Attention will then turn to "multi-level governance", widely accepted as the central model for understanding sub-state mobilisation in the EU. However, this study adopts the approach that no one of these interpretations of sub-state mobilisation is in itself wholly convincing and examines two potential complements for enhancing the explanatory potential of multi-level governance: *paradiplomacy* and "European Domestic Policy". From this basis, and drawing upon the experience of sub-state authorities (SSAs) in other Member States, a series of hypotheses relating to acceptance, tension, asymmetry and resources will be developed for testing in the UK case.

A "Europe with the Regions"

The issue of the mobilisation of SSAs in the EU forms part of a larger debate surrounding the consequences of European integration for the

Member States and their respective “regions”. The source of this debate can be located in the two apparently contradictory trends that were discernible from the 1970s onwards – the accelerated pace of European integration at the supranational level and, domestically, the legislative and/or executive decentralisation that took place in a number of Member States including France, Italy and Spain. This reallocation of decision-making authority placed dual pressures upon the states with policy competences being transferred both upwards to the supranational (European) level and downwards to the sub-state tier. It is within this context that sub-state mobilisation in EU policy-making has taken place.

This mobilisation has manifested itself in a number of different ways in both the domestic and EU arenas. Hooghe (1995) distinguished between institutionalised channels in the EU, institutionalised channels in the domestic arena and non-institutionalised channels. Amongst the institutionalised channels in the EU were Article 146 (TEU) allowing a Member State to be represented by a sub-state minister in the Council of Ministers (now known as the Council of the European Union) if an issue of sub-state competence was under discussion; the Committee of the Regions (CoR), also established by the Treaty on European Union (TEU); and the principle of “partnership” introduced by the 1988 Structural Funds reforms.

In the domestic arena, she identified several opportunities for sub-state engagement, although acknowledging that these vary greatly from Member State to Member State. These included the ratification of European treaties (Belgium, Germany), sub-state observers attached to Member State representations in Brussels (Germany, Spain), the opportunity to send delegates to Council and Commission working groups (Austria, Belgium, Germany), and, crucially, the opportunity to influence or develop Member State negotiating positions in areas of domestic sub-state responsibility (Austria, Belgium, Germany). Non-institutionalised channels include sub-state offices in Brussels, umbrella lobbying organisations such as the Assembly of European Regions (AER), inter-regional associations and independent collaborative projects between two or more SSAs.

It can thus be seen that sub-state mobilisation has taken a wide range of different forms, varying from Member State to Member State with some SSAs, such as those in Belgium, in a much stronger position to engage with EU policy formulation than others, such as the Spanish Autonomous Communities. These forms of mobilisation seemingly result from the interaction between those two apparently contradictory processes of decentralisation and European integration which have combined to create an overlap between the competences of the different territorial levels of governance. It is in the context of this overlap that

the mobilisation highlighted here takes place. To date, a number of possible explanations for such mobilisation have thus far been identified:

- That a “Europe of the Regions” is developing with a potential corresponding decline in the role of states as a federal Europe develops (Knemeyer, 1990; Hrbek & Weyand, 1994: 13);
- That SSAs have been deliberately mobilised by the Commission as potential allies in an attempt to weaken central governments by “squeezing” them from above and below (Tömmel, 1998);
- That mobilisation is an attempt to create the “Third Level” of a balanced three-tier federal EU structure (Bullmann & Eißel, 1993);
- That mobilisation has taken place in response to the advent of new funding opportunities and participation in the formulation of regional policy at the European level as a result of the reform of the Structural Funds in 1988 (Marks, 1992; 1993);
- That mobilisation is a reaction to the ever expanding scope of the EU’s policy competences which have been perceived as a threat to SSAs’ own legislative or executive responsibilities. Such expansion has been interpreted as a “Europeanisation” of domestic politics as the EU agenda increasingly cuts across the domestic division of competences (Jeffery, 1996; 1997).

Let us begin by looking at the earlier interpretations of sub-state mobilisation, generated at a time when such sub-state activities were a new development in the EU system. The remainder of this section will focus firstly upon the concept of a “Europe of the Regions”, and whether such a development was precipitated by the European Commission, and secondly on the potential emergence of a Third Level.

A “Europe of the Regions” was a concept that was widely used as a slogan by SSAs mobilising in the EU, but which suffers from a number of problems of definition, not least the issue of how to define a “region” (Hrbek & Weyand, 1994: 13-19). As such, it has been interpreted in a number of different ways by different groups according to their own interests. For example, the Catalan nationalists of “Convergence and Union” (CiU) promoted the concept as a way of gaining recognition for Catalonia, whereas Flanders has been interested in promoting it as a means of gaining protection for cultural identity and minority languages, a “Europe of the Cultures”, and the German *Länder* seized upon the concept of a “Europe of the Regions” as a means of protecting their own institutional rights and competences (Keating, 1998: 164).

The concept has been identified as “originally meaning a federal Europe with a reduced role for nation states” (Keating & Loughlin, 1997: 1), representing the concept in its most idealistic form with the